

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MALIBU MEDIA, LLC,

No. C 15-04248 WHA

Plaintiff,

v.

JOHN DOE SUBSCRIBER ASSIGNED IP  
ADDRESS 98.210.130.222,

Defendant.

**ORDER DENYING REQUEST  
FOR EXTENSION AND  
DISMISSING CASE FOR  
FAILURE TO TIMELY  
SERVE DEFENDANT**

Plaintiff Malibu Media, LLC commenced this copyright infringement action on September 17, 2015. Pursuant to Rule 4(m), the deadline to effectuate service was January 15, 2016. On October 11, Malibu Media filed a motion for leave to serve defendant's Internet provider with a subpoena for the purpose of receiving defendant's identifying information. An order granted that motion on October 18 (Dkt. No. 11). That order also required Malibu Media to file any documents that included defendant's identifying information under seal and prohibited Malibu Media from disclosing that information or using it for any purpose other than protecting its rights as set forth in the complaint.

Malibu Media received Comcast's response on December 10. Malibu Media had thirty-six days within which to move to file under seal an amended complaint and proposed summons including defendant's identifying information and to effectuate service once it received the unredacted summons. On January 15, Malibu Media sought an extension of the deadline to effectuate service, which lapsed that day (Dkt. Nos. 16). On January 17, an order extended the

1 deadline to effectuate service to January 29, 2016 (Dkt. No. 18). The summons issued the same  
2 day (Dkt. No. 17).

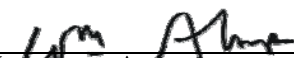
3 On January 29, Malibu Media again sought to extend the deadline to effectuate service,  
4 noting that counsel had drafted the amended complaint and proposed summons and the motion  
5 to file them under seal on January 21 (after the original deadline to effectuate service had  
6 already lapsed) but neglected to file the motion (Dkt. No. 18). On February 2, an order  
7 extended the deadline to February 16 (Dkt. No. 19). Malibu Media filed its sealing motion on  
8 February 3, which was granted the same day. The unredacted summons issued on February 4.  
9 Malibu Media received the unredacted summons by mail on February 8 and requested a third  
10 extension of the deadline to effectuate service on February 16 (Dkt. No. 24).

11 Counsel have not acted diligently. They neglected to timely prepare and file the sealing  
12 motion, and they have requested extensions at the last minute three times. Additionally,  
13 plaintiff's counsel (or any associated counsel of record) could have gone in person to the  
14 Clerk's Office on the 16th floor of 450 Golden Gate Ave., San Francisco, to retrieve the  
15 unredacted summons thereby avoiding any delays caused by the mail. Counsel elected not to  
16 do so. (To be clear, in order to protect the identity of the defendants in Malibu Media's  
17 numerous ongoing actions in this district, unredacted summonses will only be issued to counsel  
18 that have appeared in the given action, not to any third parties such as messengers.)

19 Malibu Media's failure to timely serve the defendant in this action is the result of flawed  
20 follow-through on counsel's part. Malibu Media's third request for an extension is **DENIED**,  
21 and this action is **DISMISSED** for failure to timely serve the defendant. The Clerk shall please  
22 **CLOSE THE FILE.**

23  
24 **IT IS SO ORDERED.**

25  
26 Dated: February 17, 2016.

27   
28 WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE